

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 495 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KESARBEN PUNJABHAI KALAL

Versus

CHIEF DIST.HEALTH OFFICER

Appearance:

MR AM RAVAL for Petitioner
GOVERNMENT PLEADER for Respondent No. 1
M/S TRIVEDI & GUPTA for Respondent No. 2
MR V.B. Gharania, AGP for Respondent No. 3

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 28/12/98

ORAL JUDGEMENT

This petition has been filed challenging the order dated 4-10-1993 passed by the Incharge Superintendent, Community Health Centre, Vijaynagar, Sabarkantha. The petitioner was engaged by the respondent No.2 in the year 1981 as part time water woman. As per the direction of the Regional Deputy Director, Health and Medical Services, Gandhinagar, class IV daily rated employees who were engaged by the Panchayats were ordered to be accommodated in Panchayat services. Accordingly the petitioner was ordered to be relieved on 5-10-1993 from the office of Community Health Centre to join duty at District Panchayat. Though it is mentioned in the petition that the petitioner was not allowed to resume duty by respondent No.1 and, therefore, she approached before this Court to protect her right, affidavit has been filed today in court that the petitioner is working at the Primary Health Centre, Vijaynagar, as water woman and she has continued herself with the respondent awaiting regularisation. In the affidavit in reply filed on behalf of respondent No.3 it is stated that the petitioner having been appointed by the District Panchayat without the previous approval or sanction of the Government, she cannot be allowed as an employee of the State Government. It is also admitted in para 3 of that affidavit-in- reply that the petitioner was relieved by the Superintendent, Community Health Centre, Vijaynagar to join under respondent No.1 as the petitioner was a Panchayat employee appointed without previous sanction of the Government. It is also stated in para 6 that the Primary Health Centre which was under the District Panchayat has been converted into Community Health Centre by withdrawing the unit from the administrative control of the District Panchayat and placing it at the State level, and the employees of the District Panchayat were relieved for joining suitable posts under the District Panchayat as they were employees appointed without prior approval of the State Government. The Panchayat is an autonomous body. It can appoint its own employees at its own risk and for that purpose the State Government is not at all responsible.

2. Learned counsel for the petitioner submitted that the employees of the Panchayat are deemed to be the employees of the State Government. He further submitted that the entire staff of the Primary Health Centre has been taken over under the Community Health Centre of the State Government except the petitioner. As the petitioner's post was not sanctioned, she was not taken in service by the State Government. As the petitioner is

working since 1981 and, according to the learned counsel for the petitioner, she is still working, she is entitled to be absorbed and regularised in the cadre of Class IV employees of the State Government.

3. Heard the learned A.G.P. and perused the relevant papers.

4. The petitioner is working from 1981 as part time water-woman and the Primary Health Centre where the petitioner was working has been taken over by the Community Health Centre of the State Government. However, as the petitioner's post was not sanctioned, her services could not be regularised. Considering the length of service, she is entitled to be regularised. The State Government is required to sanction the post and regularise the services of the petitioner in class IV cadre. Accordingly this petition is allowed. The State Government is directed to sanction the post of the petitioner and absorb her and regularise the services of the petitioner in class IV cadre within a period of two months from today, in case the petitioner is still working in the Community Health Centre, Vijaynagar in Sabarkantha District, her services shall be regularised from the date of sanction by the Government. Rule made absolute accordingly.

Direct service permitted.

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CSM